IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA.

CWP No.79/2005

Reserved on.22.6.2007

Decided on.24.8.2007

Parenteral Drugs India Limited and others. …Petitioners.

Versus

State of H.P. and another. …Respondents

Coram

The Hon'ble Mr. Rajiv Sharma, J.

Whether approved for reporting ?[1]*. yes.*

For the petitioner : Mr. Ankush Dass Sood, Advocate.

For the respondents Mr. M.S. Chandel, Advocate General with Mr. M.A. Khan and Ms. Meenakashi Sharma, Dy. A.Gs.

Rajiv Sharma, J.

The brief facts necessary for the adjudication of this petition are that the petitioner No.1 is company incorporated under the provisions of the Companies Act, 1956. The petitioners No.2 and 3 are group of companies of the petitioner No.1. The respondent-State had floated several schemes in the year 2001-02 attracting industrialists from out side the State to set up industries in the State of Himachal Pradesh. The Companies on the basis of the incentives announced by the State were entitled to various concessions. The petitioners on the basis of the incentives given by the State of H.P. from time to time intended to set up industry in the State of Himachal Pradesh. The petitioners purchased land measuring 21 bighas and 12 biswas in District solan. They also entered into agreements to sell with the owners of the land on 28.1.2004

---

[1] ***Whether the reporters of Local Papers may be allowed to see the judgment***? yes.

stipulating the price @ Rs. 3.40 lakhs per bigha. The land was purchased vide seven agreements to sell. They were required to seek the permission of the State as per section 118 of the H.P. Tenancy and Land Reforms Act, 1972 (hereinafter referred to as the Act). They moved an application in accordance with law and the necessary permission was granted to the petitioners Companies on 20.7.2004. They executed seven sale deeds on 20.7.2004. It will be apt to note at this stage that the State had issued circular on 20th July, 2000 stating therein that the stamp duty and registration fee will be assessed on the basis of the market price prevalent on the date of agreement. The petitioners affixed the stamp duty and registration fee on the basis of one year average price calculated for the year 1st January, 2003 to 31st December, 2003 for the purpose of registration.

The Sub Registrar, Nalagarh impounded the documents purportedly exercising the powers under section 33 of the Indian Stamps Act, 1899 read with para 91 of the Registration Manual. He referred the documents to the respondent No.2 for getting the market value of the land involved in the deeds re-evaluated by the District Collector under section 47-A of the Indian Stamps Act, 1899. The sum and substance of the objection raised by the Sub Registrar was that petitioners were bound to pay stamp duty and registration fee on the basis of the market value of the property existing as on 30.6.2004 by calculating one year average with effect from 1st July, 2003 to 30th June, 2004. During the pendency of this petition, a notice was issued by the District Collector, Solan to the petitioners. The District Collector, Solan had passed the order on 10.10.2005. The operative portion of the order reads thus:

> **"Therefore, keeping in view the discussion above, report of Revenue Officer and classification of land I am of the firm view that interest of state is fully met to assess the market value of**

the land under dispute to amounting to Rs. 9 lacs per bighas as on 30.6.2005 as the classification of land is "Chahi" i.e. irrigated land, which is supposed to be of the best quality being an agriculturable land. Normally land of such classification should be desisted from sale as it is bound to defeat the purpose of conserving cultivable land whereas land for setting up industries can be set up on land of 2nd class such as barren/uncultivable land in order to protect the interest of farmers in particular and state in general from reducing the area of cultivable land for the purpose of stamp duty and registration fee under section 47-A Indian Stamps (Himachal Amendment) Act, 1988 and the deficient amount if any be recovered from the respondent company. The amount so assessed above was recoverable on the date of registration, therefore, the interest at the rate of 12% be recovered from the respondent from the date of execution of sale deeds till the date of payment. While deciding the value of the land for stamp duty, the contention of the ld. counsel for respondent company to adjudicate on the point of notification of H.P. Government dated 20.7.2004 has also been kept in consideration and after considering its pros and cons, the value of the land for stamp duty as discussed above is absolutely reasonable with in the ambit and in consonance with the spirit of Government Notification dated 20.7.2004 ibid and I found no ambiguity in the same. The file after completion be consigned to General Record Room."

Mr. Ankush Dass Sood, Advocate had strenuously argued that his clients were liable to affix the stamp duty and registration fee as per the market price prevailing as on 28.1.2004 and not on 20.7.2004. He also contended that the petitioners have entered into agreements to sell on the basis of the assurances held out to them by the State as per letter dated 20.7.2000. He also contended that on the basis of the assurances held out to the petitioners as per letter dated 20.7.2000, his clients have changed their position to their detriment by raising a loan of Rs. Seven

crores from the Bank. He further contended that the letter dated 15.10.2004 is prospective in nature and the rights which have accrued to the petitioners on the basis of letter dated 20.7.2000 cannot be taken away retrospectively.

The learned Advocate General had supported the order dated 10.10.2005 and also supported the issuance of notification dated 15.10.2004 on the basis of which letter dated 20.7.2000 stood withdrawn. He had disputed the contention of Mr. Ankush Dass Sood, Advocate with regard to the applicability of principles of legitimate expectation and promissory estoppel invoked by the petitioners.

I have heard the learned counsel for the parties and perused the record.

The fact of the matter is that the petitioners on the basis of the various schemes announced by the State had decided to set up the industries in the State of Himachal Pradesh. The main concession announced by the State according to Mr. Ankush Dass Sood, Advocate was tax holiday and cheaper electricity. The Companies had purchased land measuring 21 bighas and 12 biswas in District Solan @ 3.40 lakhs per bigha. The agreements to sell were entered on 28th January, 2004. The necessary permission under section 118 of the Act has been accorded to the petitioner on 20.7.2004. The documents were placed before the Sub Registrar, Nalagarh for registration by affixing the stamp duty and registration fee as per the market value prevalent at the time of entering into agreements to sell. The stamp duty and registration fee had been paid by the petitioners on the basis of one year average price calculated from 1.1.2003 to 31.12.2003. The State had issued letter dated 20.7.2000. It is evident from the phraseology employed in letter dated 20.7.2000 that the market price for the purpose of stamp duty and

registration fee is to be assessed on the basis of the prevailing market price on the date of agreement to sell. The underlined objectives for the issuance of communication dated 20th July, 2000 is that the process of seeking permission under section 118 of the Act is time consuming and there is every possibility of the escalation of the prices of the land during the period the case remains under process.

The petitioners on the basis of letter dated 20th July, 2000 were required only to affix the stamp duty and registration fee on the basis of the market value of the land prevailing on the date of entering into agreements to sell on 28.1.2004. The petitioners had raised loan from the State Bank of India as is evident from Annexure P-7 amounting to Rs. seven crores. The petitioners have altered their position to detriment on the basis of specific assurance held out as per letter dated 20th July, 2000 and they are required to pay stamp duty and registration fee assessed on the date of entering into agreements to sell.

Now, the Court is to consider the effect of issuance of letter dated 15.10.2004 whereby the earlier notification dated 20.7.2000 has been withdrawn. The petitioners and similarly situated persons have acted on the basis of letter dated 20.7.2000 by entering into agreements to sell and taking permission from the State under section 118 of the Act. They have raised loans from the banking institutions. The petitioners have acquired the vested right on the basis of letter dated 20.7.2000 to pay the stamp duty and registration fee on the basis of the market price prevailing at the time of agreements to sell. This valuable rights of the petitioners cannot be permitted to be impaired by the respondents on the basis of letter dated 15.10.2004. It is settled law that the acquired and vested rights cannot be taken away retrospectively. The law looks forward. Even on the basis of the language in which letter dated 15.10.2004 is couched it is

clear that the same would apply prospectively. A conscious decision has been taken by the State after taking all the pros and cons into consideration as per letter dated 20th July, 2000. If a decision has been taken on the basis of which the parties have been permitted to take steps, the Sub Registrar, Nalagarh could not impound the documents purportedly under section 33 of the Indian Stamp Act, 1899 and consequently the matter could not be referred to the District Collector under section 47-A (6) of the Indian Stamps Act, 1899. The District Collector while deciding the matter on 10.10.2005 has failed to take into consideration the true import of letter dated 20.7.2000. The communication dated 20.7.2000 is special concession given as an incentive to the industrialists to compensate them for the loss of time during which they have to seek permission from the State Government under the Act. The basis of the order of the District Collector, Solan should have been letter dated 20.7.2000 and the stamp duty and registration fee was to be calculated on the basis of the market value prevalent at the time of entering into agreements to sell and not 20.7.2004 on which date the permission has been accorded and the documents were produced before the Sub Reigstrar, Nalagarh. The Court by coming to the conclusion is of the firm view that the impounding of the documents and their reference to the District Collector was misconceived.

Their Lordships of the Supreme Court have held in ***Sonia Vs. Oriental Insurance Co. and others*** 2007 (9) Scale 625 that the office memorandum cannot have a retrospective effect until and unless intention of the authorities to make it as such is revealed expressly or by necessary implication in the office memorandum. No such intention can be gathered expressly or by necessary implication in memorandum letter dated 15.10.2004. Their Lordships have held as under:

> **"In any view of the matter, law is well settled that an office Memorandum cannot have a retrospective effect unless and**

until intention of the authorities to make it as such is revealed expressly or by necessary implication in the Office Memorandum. On the other hand from the Office Memorandum, as noted herein above, we find that the candidates who had already been selected, the case of such candidates would not be reopened. A close examination of clause (6) of the Office Memorandum dated 6th November, 2003, in our view, would show that it does not speak about the pending process of selection. It only speaks about the appointments already made and for which a retrospective effect has not been given. Therefore, in view of the principles laid down by the aforesaid two decisions of this Court, the Office Memorandum dated 6th November, 2003, in our view, would not apply to the selection process which started before the said Office Memorandum was issued by the respondents. It may be repeated at this stage that the appellant was permitted to appear for the examination for the post of Assistant Administrative Officer in respect of which she was declared successful on 17th February, 2004 well after the Office Memorandum was issued by the respondents.

Their Lordships of the Hon'ble Supreme Court while considering the applicability of promissory estoppel in a recent judgment in ***Southern Petrochemical Industries Co. Ltd. Versus Electricity Inspector and Etio and others***, (2007) 5 SCC 447 have held as under:

"The doctrine of promissory estoppel would undoubtedly be applicable where an entrepreneur alters his position pursuant to or in furtherance of the promise made by a State to grant inter alia exemption from payment of taxes or charges on the basis of the current tariff. Such a policy decision on the part of the State shall not only be expressed by reason of notifications issued under the statutory provisions but also under the executive instructions. Appellants had undoubtedly been enjoying the benefit of payment of tax in respect of sale/ consumption of electrical energy in relation to the cogenerating power plants.

Unlike an ordinary estoppel, promissory estoppel gives rise to a cause of action. It indisputably creates a right. It also acts on equity. However, its application against constitutional or statutory provisions is impermissible in law. This aspect of the matter has been considered in State of Bihar and Others v. Project Uchcha Vidya, Sikshak Sangh and Others [(2006) 2 SCC 545] stating:

> **"77. We do not find any merit in the contention raised by the learned counsel appearing on behalf of the respondents that the principle of equitable estoppel would apply against the State of Bihar. It is now well known, the rule of estoppel has no application where contention as regards a constitutional provision or a statute is raised. The right of the State to raise a question as regards its actions being invalid under the constitutional scheme of India is now well recognised. If by reason of a constitutional provision, its action cannot be supported or the State intends to withdraw or modify a policy decision, no exception thereto can be taken. It is, however, one thing to say that such an action is required to be judged having regard to the fundamental rights of a citizen but it is another thing to say that by applying the rule of estoppel, the State would not be permitted to raise the said question at all. So far as the impugned circular dated 18-2-1989 is concerned, the State has, in our opinion, a right to support the validity thereof in terms of the constitutional framework."**

Yet again in Mahabir Vegetable Oils (P) Ltd. and Another v. State of Haryana and Others [(2006) 3 SCC 620], it was stated:

> **"38. The promises/representations made by way of a statute, therefore, continued to operate in the field. It may be true that the appellants altered their position only from August 1996 but it has neither been denied nor disputed that during the relevant period, namely, August 1996 to 16-12-1996 not only have they invested huge amounts but also the authorities of the State sanctioned benefits, granted permissions. Parties had**

also taken other steps which could be taken only for the purpose of setting up of a new industrial unit. An entrepreneur who sets up an industry in a backward area unless otherwise prohibited, is entitled to alter his position pursuant to or in furtherance of the promises or representations made by the State. The State accepted that equity operated in favour of the entrepreneurs by issuing Note 2 to the notification dated 16-12-1996 whereby and whereunder solvent extraction plant was for the first time inserted in Schedule III i.e. in the negative list."

We may, however, notice that a survey of the earlier decisions has also been made by this Court in State of Punjab v. Nestle India Ltd. and Another [(2004) 6 SCC 465] wherein the law has been stated in the following terms:

"25. In other words, promissory estoppel long recognised as a legitimate defence in equity was held to found a cause of action against the Government, even when, and this needs to be emphasised, the representation sought to be enforced was legally invalid in the sense that it was made in a manner which was not in conformity with the procedure prescribed by statute."

Referring to Motilal Padampat Sugar Mills Co. Ltd. v. State of U.P. [(1979) 2 SCC 409], this Court observed:

"29. As for its strengths it was said: that the doctrine was not limited only to cases where there was some contractual relationship or other pre-existing legal relationship between the parties. The principle would be applied even when the promise is intended to create legal relations or affect a legal relationship which would arise in future. The Government was held to be equally susceptible to the operation of the doctrine in whatever area or field the promise is made contractual, administrative or statutory. To put it in the words of the Court:

The law may, therefore, now be taken to be settled as a result of this decision, that where the Government makes a promise knowing or intending that it would be

acted on by the promisee and, in fact, the promisee, acting in reliance on it, alters his position, the Government would be held bound by the promise and the promise would be enforceable against the Government at the instance of the promisee, notwithstanding that there is no consideration for the promise and the promise is not recorded in the form of a formal contract as required by Article 299 of the Constitution. (SCC p. 442, para 24)

[E]quity will, in a given case where justice and fairness demand, prevent a person from insisting on strict legal rights, even where they arise, not under any contract, but on his own title deeds or under statute. (SCC p. 425, para 8)

Whatever be the nature of the function which the Government is discharging, the Government is subject to the rule of promissory estoppel and if the essential ingredients of this rule are satisfied, the Government can be compelled to carry out the promise made by it. (SCC p. 453, para 33)"

This Court distinguished its earlier decision in Kasinka Trading v. Union of India [(1995) 1 SCC 274], whereupon Mr. Andhyarujina placed strong reliance, in the following terms:

"40. The case of Kasinka Trading v. Union of India cited by the appellant is an authority for the proposition that the mere issuance of an exemption notification under a provision in a fiscal statute such as Section 25 of the Customs Act, 1962, could not create any promissory estoppel because such an exemption by its very nature is susceptible to being revoked or modified or subjected to other conditions. In other words, there is no unequivocal representation. The seeds of equivocation are inherent in the power to grant exemption. Therefore, an exemption notification can be revoked without falling foul of the principle of promissory estoppel. It would not, in the circumstances, be necessary for the Government to establish an overriding equity in its favour to defeat the petitioners plea of promissory

estoppel. The Court also held that the Government of India had justified the withdrawal of exemption notification on relevant reasons in the public interest. Incidentally, the Court also noticed the lack of established prejudice to the promises when it said: (SCC p. 289, para 22)

> **The burden of customs duty etc. is passed on to the consumer and therefore the question of the appellants being put to a huge loss is not understandable. (See also Shrijee Sales Corpn. v. Union of India and STO v. Shree Durga Oil Mills.) We do not see the relevance of this decision to the facts of this case. Here the representations are clear and unequivocal."**

In MRF Ltd., Kottayam v. Asst. Commissioner (Assessment) Sales Tax and Others [(2006) 8 SCC 702], wherein one of us (Katju, J.) was a member, Kasinka Trading (supra) has also been held to be inapplicable where a right has already accrued; for instance, in a case where the right to exemption of tax for a fixed period accrues and the conditions for that exemption have also been fulfilled, the withdrawal of that exemption cannot affect the already accrued right.

In MRF Ltd. (supra), it was held that the doctrine of promissory estoppel will also apply to statutory notifications.

We may also notice an interesting observation made by Beg, J. in Madan Mohan Pathak and Another v. Union of India and Others [(1978) 2 SCC 50] wherein the learned Judge in his concurrent judgment while striking down the Life Insurance Corporation (Modification of Settlement) Act, 1976, opined: (SCC p. 87, para 34)

> **"34. Furthermore, I think that the principle laid down by this Court in Union of India v. Indo-Afghan Agencies Ltd. can also be taken into account in judging the reasonableness of the provision in this case. It was held there (at p. 385):**
>
> **Under our jurisprudence the Government is not exempt from liability to carry out the representation made by it as to its future conduct and it cannot on**

some undefined and undisclosed ground of necessity or expediency fail to carry out the promise solemnly made by it, nor claim to be the judge of its own obligation to the citizen on an ex parte appraisement of the circumstances in which the obligation has arisen.

In that case, equitable principles were invoked against the Government. It is true that, in the instant case, it is a provision of the Act of Parliament and not merely a governmental order whose validity is challenged before us. Nevertheless, we cannot forget that the Act is the result of a proposal made by the Government of the day which, instead of proceeding under Section 11(2) of the Life Insurance Corporation Act, chose to make an Act of Parliament protected by emergency provisions. I think that the prospects held out, the representations made, the conduct of the Government, and equities arising therefrom, may all be taken into consideration for judging whether a particular piece of legislation, initiated by the Government and enacted by Parliament, is reasonable."

We, therefore, are of the opinion that doctrine of promissory estoppel also preserves a right. A right would be preserved when it is not expressly taken away but in fact has expressly been preserved.

In view of the application of doctrine of promissory estoppel in the case of the appellants, their right is not destroyed and in that view of the matter although the Scheme under the impugned Act is different from the 1939 Act and the 1962 Act and furthermore in view of the phraseology used in Section 20(1) of the 2003 Act, right of the appellants cannot be said to have been destroyed. The legislature in fact has acknowledged that right to be existing in the appellants.

Their Lordships of the Supreme Court in the same judgment have considered the principles of legitimate expectation and have held as under:

"We may also notice the emerging doctrine in this behalf, viz., Legitimate Expectation of Substantive Benefit. Ordinarily, the said principle would not have any application where the legislature has enacted a statute. As, according to us, the legislature in this case allowed the parties to take benefit of their existing rights having regard to the repeal and saving clause contained in Section 20(1) of the 2003 Act, the same would apply. If, thus, principle of promissory estoppel would apply, there may not be any reason as to why the doctrine of legitimate expectation would not.

Legitimate expectation is now considered to be a part of principles of natural justice. If by reason of the existing state of affairs, a party is given to understand that the other party shall not take away the benefit without complying with the principles of natural justice, the said doctrine would be applicable. The legislature, indisputably, has the power to legislate but where the law itself recognizes existing right and did not take away the same expressly or by necessary implication, the principles of legitimate expectation of a substantive benefit may be held to be applicable.

We may notice the applicability of the said doctrine in respect of a substantive legislation, which is of some academic interest. In R v North and East Devon Health Authority, ex parte Coughlan [2001] 1 QB 213, Lord Woolf identified three categories of legitimate expectations: (All ER pp.871-72, para 57)

a) **"The court may decide that the public authority is only required to bear in mind its previous policy or other representation, giving it the weight it thinks right, but no more, before deciding whether to change course. Here the court is confined to reviewing the decision on Wednesbury grounds. This has been held to be the effect of changes of policy."**
b) **On the other hand the court may decide that the promise or practice induces a legitimate expectation of, for example, being consulted before a particular decision is taken. Here it is uncontentious that the court itself will require the opportunity for consultation to be given**

unless there is an overriding reason to resile from it in which case the court will itself judge the adequacy of the reason advanced for the change of policy, taking into account what fairness requires."

c) Where the court considers that a lawful promise or practice has induced a legitimate expectation of a benefit which is substantive, not simply procedural, authority now establishes that here too the court will in a proper case decide whether to frustrate the expectation is so unfair that to take a new and different course will amount to an abuse of power. Here, once the legitimacy of the expectation is established, the court will have the task of weighing the requirements of fairness against any overriding interest relied upon for the change of policy." (emphasis in original)

(See also para 57-59)

In R v Home Secretary, ex parte Hindley [2001] 1 AC 410 it is interesting to note the leading speech of Lord Steyn which is more reserved. Court of Appeal also considered the aforementioned concept in R (on the application of Bibi) v London Borough of Newham [2001] EWCA Civ 607. In Bibi's case (supra), the court accepted that it had jurisdiction to protect a substantive legitimate expectation but adopted a somewhat different approach from the approach taken in Coughlan (supra). In a joint judgment the court said:

"In all legitimate expectation cases, whether substantive or procedural, three practical questions arise. The first question is to what has the public authority, whether by practice or by promise, committed itself; the second is whether the authority has acted or proposes to act unlawfully in relation to its commitment; the third is what the court should do."

In determining whether an authority has acted "unlawfully", the court expressed its discontent with the standard laid down in Coughlan. It will be in the fitness of the continuing theme, to refer to Coughlan on this point:

The traditional view has been that the Wednesbury categories were exhaustive of what was an abuse of

power. However in Coughlan the court preferred "to regard the Wednesbury categories as the major instances (not necessarily the sole ones), of how public power may be misused" (para.81).

In Coughlan the court followed R v Inland Revenue Commissioners ex parte Unilever [1996] S.T.C.681, in asking itself whether the reneging by an authority on its promise was "so unfair as to amount to an abuse of power" (para.78). It concluded that it was. However, without refinement, the question whether the reneging on a promise would be so unfair as to amount to an abuse of power is an uncertain guide.

After having established such an abuse the court may ask the decision taker to "take the legitimate expectation properly into account in the decision making process." It does not necessarily follow that a legitimate expectation of a substantive benefit will be satisfied. [See also Barratt v Howard [2000] FCA 190]

We may, however, do not mean to lay down a law that the said principle is to be applied even on the face of the exercise of legislative power by the State in terms of the entries made in List II of the Seventh Schedule of the Constitution of India. Our observations must necessarily be understood in the context of the aforementioned decisions.

The object of the letter dated 20.7.2000 was to mitigate the hardships faced by the industrialists. It cannot be said to be against the provisions of the Indian Stamp Act, 1899 or the Registration Act, 1908. It is always open to the State to issue notifications/circulars giving concessions to the entrepreneurs for rapid industrialization. The letter dated 15.10.2004 does not disclose any reason for its issuance on the basis of which earlier letter dated 20th July, 2000 was withdrawn. It is imperative for all the authorities even passing the administrative order having wider ramifications to assign reasons.

The upshot of the above discussion is that:

i) **The decision dated 10.10.2005 is contrary to the promise held out to the petitioners on the basis of letter dated 20.7.2000;**

ii) **The decision dated 10.10.2005 is nullity in the eyes of law;**

iii) **The petitioners are liable to pay the stamp duty and registration fee as per the market value prevalent on the date of entering into agreements to sell i.e. 28.1.2004;**

iv) **The order passed by the District Collector, Solan on 10.10.2005 is not sustainable in the eyes of law and the market value assessed by him @ Rs. 9 lakhs per bigha as on 30.6.2005 with a further directions to recover this amount with interest 12% are also bad in law.**

v) **The petitioners have rightly invoked the principles of promissory estoppel and legitimate expectation since they have altered their position on the basis of letter dated 20.7.2000;**

vi) **The letter dated 15.10.2004 is prospective in nature and cannot destroy the rights acquired by the petitioner on the basis of letter dated 20.7.2000;**

Consequently this writ petition is allowed. Order dated 10.10.2005 passed by the District Collector, Solan is quashed and set aside. The respondents are directed to register the documents of the petitioners on the basis of the market rate which was prevalent at the time of entering into agreements to sell dated 28.1.2004 within a period of four weeks from today. There shall be no order as to costs.

(Rajiv Sharma), Judge

August 24, 2007
Awasthi